IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WP(C).No. 17533 of 2006(K)

PETITIONERS:

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1. K.ISMAIL, RETD. SR.CLERK,
   ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, KAKKANAD, (RESIDING AT HOUSE NO.17/899, MULATHU HOUSE, NEAR ST.ANTONY'S CHURCH, KAKKANAD, KOCHI-31).

2. K.A.HAMZA, RETD.JR.CLERK,
   ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, KAKKANAD, (RESIDING AT ANJIKKATHUPARAMBIL HOUSE, POTTAKUZHI.P.O, KALOOR, KOCHI-17).

3. B.A.KOCHAHAMMED, RETD. SALESMAN,
   ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, KAKKANAD, (RESIDING AT VELIPARAMBIL HOUSE, NEAR RAILWAY STATION, CHOWWARA).

4. V.S.BALAKRISHNAN, RETD.SALESMAN,
   ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, KAKKANAD, (RESIDING AT SREENILAYAM, KODAPPILLY HOUSE, KAROOR.P.O, ALUVA VIA.).

5. P.K.RAJAN NAIR, RETD.SALESMAN,
   ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, KAKKANAD, (RESIDING AT VRINDAVAN, KAKKANAD.P.O, ERNAKULAM).

6. N.GOPALAN, RETD.CLERK,
   ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, KAKKANAD, (RESIDING AT KARAKKATTU HOUSE, P.J.ANTONY ROAD, PALARIVATTOM, KOCHI-25).

7. A.B.KOMALAM, RETD.SALES GIRL,
   ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, KAKKANAD, (RESIDING AT UTHRAM HOUSE, ST.MARTIN ROAD, PALARIVATTOM).

8. P.A.VARGHESE, RETD.SALESMAN,
ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, KAKKANAD, (RESIDING AT PUTHIYEDATH HOUSE, PANANGAD.P.O, COCHIN-682506).

9. C.E.JOSEPH, RETD.SENIOR CLERK,
ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, KAKKANAD (RESIDING AT CHILLAN HOUSE, NEELESWARAM, KALADY).

10. P.PURUSHAN, RETD. SALESMAN,
ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, (RESIDING AT VADACHIRA HOUSE, KAKKANAD, KOCHI-30).

11. K.SUBHASH CHANDRA BOSE,
RETD. SALESMAN, ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, KAKKANAD, (RESIDING AT VALLAZHUTH HOUSE, PALLURUTHY, KOCHI).

12. P.K.ABOOBACKER, RETD.MANAGER,
ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD., NO.E.122, KAKKANAD, (RESIDING AT MAZHUVANCHERI PARAMBIL HOUSE, DESABHIMANI ROAD, KALOOR, KOCHI-17).

13. E.K.VENUGOPAL, RETD. SR.CLERK,
ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD. NO. E. 122, KAKKANAD, (RESIDING AT NANDANAM, SOUTH CHITTOOR, KOCHI).

14. M.RAVEENDRA PANICKER,
RETD.MANAGER IN CHARGE, ERNAKULAM DISTRICT WHOLESALE CO-OP. CONSUMER STORES LTD.NO.E.122, KAKKANAD, (RESIDING AT UTHRAM HOUSE, ST.MARTIN ROAD, PALARIVATTOM, KOCHI-25.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.T.R.SADEESAN
SRI.SYAMJI RAM

RESPONDENTS:
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1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),

ERNAKULAM.

2. THE ERNAKULAM DISTRICT WHOLESALE
CO-OP. CONSUMER STORES LTD. NO. E. 122,
KAKKANAD, NEAR CIVIL STATION, KOCHI,
REP. BY ITS MANAGING DIRECTOR.

3. THE CONTROLLING OFFICER/DISTRICT LABOUR
OFFICER, CIVIL STATION,
KAKKANAD, ERNAKULAM.

4. THE DISTRICT COLLECTOR,
CIVIL STATION, KAKKANAD,
ERNAKULAM.

5. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
TRIVANDRUM.

6. STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
CO-OPERATION DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.GEORGE C.VARGHESE
SRI.V.M.SYAM KUMAR (R2)
SRI.SURESH SAMUEL
SRI.N.K.SUBRAMANIAN
BY SENIOR GOVT. PLEADER SRI.P.N.SANTHOSH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2006, ALONG WITH WPC NO. 30594 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXTS:

EXT.P1	COPY OF LIST CONTAINING AMOUNTS DUE TO THE PETITIONERS.
EXT.P2	TRUE COPY OF ORDER DATED 17.7.1999 ISSUED BY THE 3RD RESPONDENT IN C.C.No.19/99
EXT.P3	TRUE COPY OF ORDER NO.CS.7100/2000 DATED 27.1.01 ISSUED BY THE FIRST RESPONDENT AS PER JUDGMENT IN OP.35786/2000.
EXT.P4	TRUE COPY OF JUDGMENT DATED 13.2.2001 IN OP.NO.35745/00 OF THIS HON'BLE COURT.
EXT.P5	TRUE COPY OF ORDER DATED 23.3.2004 IN W.P.(C) 22472/2003 OF THIS HON'BLE COURT.
EXT.P6	TRUE COPY OF SCHEME FOR THE PAYMENT OF RETIREMENT BENEFITS AS PER ORDER DATED 23.3.2004 IN WP.(C) 22472/2003.
EXT.P7	TRUE COPY OF JUDGMENT DATED 13.1.2005 IN WP.(C) 22472/03 OF THIS HON'BLE COURT.
EXT.P8	TRUE COPY OF ORDER NO.CS/4508/03 DATED 22.6.2005 ISSUED BY THE FIRST RESPONDENT.
EXT.P9	TRUE COPY OF G.O.(Rt) NO.194/06/CO.OP. DATED 28.4.2006 ISSUED BY THE 6TH RESPONDENT.

//TRUE COPY//

P.A. TO JUDGE.

J.M. JAMES, J.

W.P.(C) Nos. 17533 & 30594 of 2006

Dated this the 27th November, 2006.

J U D G M E N T

W.P.(C) No.17533/2006 is preferred by 14 retired employees, who had retired on various dates, from 1998 to 2003, from the Ernakulam District Wholesale Co-operative Consumer Stores Ltd. No.E.122, Kakkanad, in short 'the Consumer Stores'. The prayer of the writ petitioners is to quash Ext.P9 order of the Government, and direct the Consumer Stores to disburse all the retirement benefits to the writ petitioners, as mentioned in Exts.P1 and P8, with interest, immediately. Further prayer is to direct the Registrar of Co-operative Societies to proceed against the movable and immovable properties of the Consumer Stores under the provisions of the Revenue Recovery Act.

2. W.P.(C) No.30594/2006 is preferred by 5 other retired employees. Their prayer is to direct the Consumer Stores to pay all the retirement benefits with interest, as is applicable to the other retired employees, and to disburse the same, at the earliest.

3. Earlier 14 retired employees came before this Court preferring W.P.(C) 22472/2003. As per the judgment dated 13.1.2005, this Court directed the Joint Registrar of Co-operative Societies (General), Ernakulam, to make an assessment of the present situation of the Consumer Store, and to take steps to settle the liabilities of the Society, particularly, towards the retired employees. It was directed to be done within six months thereof. Yet another direction to the Joint Registrar was to make an assessment as to the future of the Consumer Society, in view of the acute financial difficulties faced by it, and the liability getting mounted up.

4. Ext.P8 (W.P.(C) No.17533/2006) is dated 22.6.2005, through which an order was passed by the Joint Registrar to give the retirement benefits, at the rate of Rs.5000/= per month, towards gratuity and their leave salary and the balance gratuity were directed to be worked out within three years, and to be disbursed of within the above period.

5. The Consumer Society challenged it before the Government through an appeal, dated 29.7.2005. As per the order dated 28.4.2006 (Ext.P9 in W.P.(C) 17533/2006), the Government

disposed of the same setting aside Ext.P8 directions, and also allowing the appeal preferred by the Consumer Society. Hence, 14 employees are before this Court with W.P.(C) 17533/2006.

6. The facts explained above clearly reveal, particularly, from the counter filed by the Consumer Store, that they have not so far worked out any tangible schemes, which would give reliefs to the retired employees, and no specific prayer also has been made or suggestions put forward to work out and give the due benefits to the retired employees in the counter filed by the Consumer Store.

7. The learned counsel appearing for the Consumer Store, had however, submitted that sufficient time may be granted, so that an attempt could be made to revive the functioning of the Store, the dues the retired employees are entitled could be paid to them, and the other 29 employees who are working in the Consumer Store could also be protected from being thrown away from the working of the Store.

8. The learned counsel appearing for the writ petitioners in W.P.(C) No.30594/2006, submitted that the benefits that may be granted to the 14 writ petitioners may be granted to them as well.

9. I have heard the arguments advanced by the Senior Government Pleader in this case. It is worth while to note that this Court has passed the judgment on 13.1.2005. The Joint Registrar passed the order on 22.6.2005. The Consumer Store took up the same through appeal on 29.7.2005. But there is nothing before me to show that from 2005 till now, the Society had made any efforts by way of reviving the Store or attempting to pay back the dues to the retired employees. The facts contained in the order of the Joint Registrar dated 22.6.2005 show that the gratuity due to the 14 retired employees comes to Rs.10,64,410/=, and the leave salary to the above retired employees comes to Rs.2,78,481/=. It is submitted that about 78 employees have retired, and of them, 8 have already passed away. All of them are to be paid with their gratuity, leave salary and other benefits, together with the statutory interest on the gratuity. In Ext.P8 in W.P.(C) No.17533/2006, the Joint Registrar had worked out, as on 31.7.2004, the benefits due to retired employees as Rs.12,16,117/= towards leave salary, and Rs.45,57,646/= for the gratuity. There are also 22 revenue recovery notice against the Consumer Store. As on 31.3.2004, the accumulated loss of the Consumer Store is Rs.55,15,40,047 and paise 79. Even according to the report of the Assistant Registrar of Kanayannoor, there is net loss of Rs.3,70,20,539 and paise 79 for the year 1999-2000. As per the report, Rs.90,83,100/= has to be paid towards the Government share

and Rs.91,09,754/= towards the loan taken from the Government, and towards the interest of the said loss, an amount of Rs.49,43,323/= is to be paid. Further, an amount of Rs.2,96,01,225/= is to be repaid to the District Co-operative Bank under various heads. There is another total liability of Rs.7,83,97,081/=. The above figures show the alarming situation in which the Consumer Store has been placed into. But in Ext.P9, the Government has not considered all these aspects, while setting aside Ext.P8 order of the Joint Registrar, and allowing the appeal of the Consumer Stores. It is also seen from Ext.P9 order itself that the Government has heard only the Joint Registrar and the Consumer Stores, and not the affected persons, the retired employees who are before me.

10. I agree with the arguments advanced by the counsel for the petitioners in W.P.(C) 30594/2006, that all the retired employees had to get their benefit. As discussed above, there is no suggestion given by the Consumer Stores as to how they would tie over the situation, which, I have discussed in nut shell above, and the figures shown as an alarming situation. Counsel appearing for the Consumer Stores, however, submitted that they would approach the Government, the State and the Central, and try to revive the Store, so that 29 employees, who are presently working may not be put into

difficulties. I stated earlier, from 2005 till now, no one has approached either the Government or any other agency, to bring about any settlement both by paying away dues to the retired employees, and also an attempt to revive the Consumer Store which already immersed in deep loss. However, counsel now submits that further time may be granted, so that the last attempt could be made for paying the dues to all the retired employees, as well as to revive the Store, with the help of various agencies, and the State and Central Governments.

11. In view of the above discussions, I dispose of these writ petitions as follows:-

1) Ext.P9 order dated 28.4.2006 (W.P.(C) 17533/2006) is set aside.

2) Ext.P8 dated 22.6.2005 of the Joint Registrar (General) of the Co-operative Societies, Ernakulam, is restored with the modification that he shall work out afresh, the payment of all retirement benefits to all the retired employees of the Ernakulam District Wholesale Co-operative

Consumer Stores Ltd. No.E.122, Kakkanad, within one month from the date of receipt of a copy of this judgment.

3) The Consumer Stores is given six months time from the date of receipt of a copy of the judgment, to pay off the entire dues to all the retired employees, as per their entitlements, so that this very old matter is finally settled, without the same being allowed to be dragged any further.

4) At the time of the working out of the Scheme moralities, and the method of settlement of dues to all the retired employees, the Joint Registrar shall hear all concerned.

5) In order to protect the interest of the serving employees, 29 in number, their representative could also be heard.

J.M. JAMES,
JUDGE

nj.